

Office of Chief Counsel  
Internal Revenue Service

Memorandum

CC:NER:MAN:TL-N-4699-00  
PSchneiderman

date:

to: Director, Field Operations  
Financial Services and Health Care  
ATTN: Mark Weinberg, Case Manager  
(Revenue Agent Robert Wein)

from: District Counsel, Manhattan (CC:NER:MAN)

subject:

Form 977, Letter 907  
Tax Years [REDACTED], [REDACTED] and [REDACTED]  
Consent to Extend the Statute of Limitations on Assessment  
Against Transferee

STATUTE OF LIMITATIONS EXPIRES: [REDACTED]

UIL Nos. 6501.08-12 and 6901.03-01

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We write in response to your request for advice in the above-captioned matter. Our advice is set forth below and has been coordinated with the National Office. We remind you, however, that National Office 10 day post-review procedures are in effect with regard to this matter and ask that you not act on the advice until at least 10 after the date of this memorandum.

Issue:

Whether the provisions of I.R.C. § 6501(c)(4)(B), requiring the Service to notify a taxpayer of its rights when requesting an extension of a statute of limitations, apply to the Service's request of a transferee to consent to extend the statute of limitations on its transferee liability.

Conclusion:

The provisions of I.R.C. § 6501(c)(4)(B) apply when the Service seeks a consent from a transferee to extend the statute of limitations on its transferee liability. Accordingly, the Service must advise the transferee of its applicable rights under I.R.C. § 6501(c)(4)(B). Notice may be given orally or in writing. We recommend that notice be given in writing. This may be accomplished by revising a Letter 907 to reflect the transferee situation.

Facts:

Your office is presently auditing the income tax liability of the [REDACTED] and the [REDACTED] (" [REDACTED] ") for the taxable years [REDACTED], [REDACTED], and [REDACTED]. The earliest statute of limitations on assessment with respect to the taxpayers for the years at issue expires on [REDACTED]. You are now seeking to extend the statute of limitations on assessment beyond [REDACTED].

In [REDACTED], [REDACTED] (" [REDACTED] ") merged with [REDACTED] (" [REDACTED] "). [REDACTED] survived the merger, but kept [REDACTED] as its name. Also in [REDACTED], [REDACTED] merged with [REDACTED] (" [REDACTED] "). [REDACTED] survived the merger and became known as the [REDACTED].

In light of the above mergers, your office previously requested advice from us as to the correct language for Consents to Extend the Statute on Assessment (Forms 872) with respect to the taxpayers for a prior cycle. In addition to providing your office with language for the Forms 872, we advised you to obtain Forms 2045 (Transferee Agreement) and Forms 977 (Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Liabilities Against a Transferee or Fiduciary) from the [REDACTED] and the [REDACTED], the respective entities surviving the mergers. Accordingly, you are now also seeking to extend the statute of limitations on assessment against the [REDACTED] and the [REDACTED], as transferees.

Discussion:

Pursuant to section 3461(b)(1)-(2) of the IRS Restructuring and Reform Act of 1998 ("RRA 98"), the Service, when seeking consent to extend the statute of limitations, must notify the taxpayer of the taxpayer's right to refuse to extend the statute of limitations or to limit the extension to particular issues or to a particular period of time. This provision was codified in I.R.C. § 6501(c)(4)(B) and applies to all requests for consent made after December 31, 1999. The Internal Revenue Manual was revised to reflect this change. Under the revised Manual provision, a form Letter 907, explaining the taxpayer's rights, is now to be used to solicit a Consent to Extend the Statute of Limitations on Assessment (Form 872). See IRM 4541.1(2).

Specifically, Letter 907 states, in part:

We have enclosed copies of consent Form 872, which extends the statute of limitations period. Before signing this form, it is important that you understand your rights concerning consents, which are as follows:

- 1) You have the right to refuse to extend the limitations period.
- 2) You have the right to request the extension be limited to particular issues held open for further examination or appeal.
- 3) You have the right to request the limitations period be limited to a specific date.

If you wish to exercise any of your rights mentioned above, please review the enclosed Publication 1035, *Extending the Tax Assessment Period*, for a more detailed explanation of your rights, options and procedures.

It is clear from the above language that Letter 907 was explicitly drafted to address the situation where the Service seeks a consent to extend the statute of limitations from a taxpayer with respect to its own tax liability. This limitation is certainly understandable since section 6501(c)(4)(B) only addresses the extension of a taxpayer's statute of limitations with respect to its own tax liability. It does not address a transferee situation. Moreover, the Code section that does

address transferee liability, I.R.C. § 6901, does not contain an equivalent provision that would require the IRS to give notice to a transferee of its rights when presented with a request for consent to extend the transferee statute of limitations.

. Notwithstanding the absence of statutory language and direction from the Manual, we believe that a transferee should receive the same notice that a taxpayer would be entitled to receive. According to the legislative history, section 6501(c)(4)(B) was enacted because not all taxpayers were fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice but to agree to extend the statute of limitations upon the Service's request. See Senate Committee Report (S. REP. NO. 105-174). Clearly, such bewilderment over the right to refuse is not limited to taxpayers alone; it would extend to transferees as well. We, therefore, believe that Congress's failure to include transferees in the category of those entitled to notice was an oversight. In our view, it seems incongruous to provide notice to a taxpayer (transferor) of its right to refuse to extend the statute of limitations on assessment with respect to its own tax liability, but not give the same notice to the transferee of that taxpayer's tax liability. Accordingly, in the subject case, we recommend that [REDACTED] and the [REDACTED] be advised of their rights with respect to the Forms 977 the Service seeks to have executed.

It is not important how [REDACTED] and the [REDACTED] are advised of their rights. But, out of an overabundance of caution, we recommend that the advice be given in writing. To do so, we recommend that you use as your models the attached Letters 907, which have been revised to suit a transferee situation.

You will note that the second enumerated right on each of the revised letters has been crossed out. This provision has been excised because a transferee would not have the right to limit the extension request to particular issues. Such right would belong to the taxpayer only. Also, with respect to the third enumerated right, a transferee would not have the right to limit the extension to any particular date. Under I.R.C. section 6901(c), the period of limitations with respect to a transferee is one year after the expiration of the period of limitation for assessment against the transferor. Thus, under the statute, a transferee would not be able to limit the extension to a specific date prior to one year after the expiration of the underlying statute of limitations against the transferor. Accordingly, we recommend that you add the following language to the third enumerated right: "... as long as such date is no earlier than one year after the expiration of the period of limitation for

assessment against the transferor. See I.R.C. § 6901(c)." A sample of this language (in hand writing) is provide for you on the attached revised Letter 907 addressed to [REDACTED]. This language should also be added to the letter to [REDACTED].

In addition, we recommend that Publication 1035 (Extending the Tax Assessment Period) be provided to the transferees. Also, please note that IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer (transferee). Dated copies of both letters (Letter 907 and Letter 929(DO)) should be retained in the case file as directed. When the signed extension is received from the transferees, the responsible manager should promptly sign and date them in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

In the event you determine that you will provide notice to the transferees orally, please ensure that the case history is properly noted.

Should you have any questions regarding this matter, please contact Paul Schneiderman of this office at (212) 264-1595, ext. 290.

LINDA R. DETTERY  
District Counsel

By: THEODORE R. LEIGHTON  
Assistant District Counsel

Noted:

LINDA R. DETTERY  
District Counsel

cc: Michael P. Corrado (by e-mail)  
Assistant Regional Counsel (TL)

Paulette Segal (by e-mail)  
Assistant Regional Counsel (LC)

Mary Helen Weber (by e-mail)  
Assistant Regional Counsel (LC)

Peter LaBelle  
Assistant District Counsel